

IN MEMORIAM: LIONEL H. FRANKEL

*John J. Flynn**

We have gathered together to celebrate the life and mourn the death of Lionel Frankel—husband, father, brother, teacher, colleague, and friend. We celebrate his life because he brought us uncommon gifts of decency, sensitivity, humanity, and compassion. We mourn his death because we will miss his presence deeply, even as we will treasure the gifts he brought us for many years to come. He made us all better persons and this place a better school where great teaching and respect for students are the first priority and decency, humanity, and compassion are highly valued. We who have known him for many years always appreciated his unique contributions to our community and to each of us individually. His students came to recognize these qualities in Lionel intuitively, and it is why many of them remember Lionel with great fondness as their finest teacher, their lifelong friend, and a model for what it means to be a decent human being.

Lionel joined the faculty over thirty-five years ago when we succeeded in luring him from Wayne State Law School in Michigan. He grew up in New York City, but took to the West like it was the place he had always been looking for. There were a few bumps along the way as Lionel learned to live life in a less crowded place with a lawn to mow. I recall one day Lionel stopped by my house and asked if I would take a look at his garden. He said he had planted corn and no ears were being produced on what looked like otherwise splendid and robust plants. I visited Lionel and Phyllis's home and saw a beautiful line of spectacular corn plants evenly spaced in a single row. When I explained that corn plants need boy corn and girl corn plants next to each other to pollinate and must be planted in hills or multiple rows to produce ears of corn, he smiled sheepishly and said, "Oh, so that's how it works!"

Undeterred by his early disappointments with farming, Lionel went on to become the owner of a ranch in Torrey, Utah, where he could watch his alfalfa grow, worry about irrigating the place, and watch his dogs and the other animals he loved roam free. He became much more a farmer than most of us. He loved his farm and time in Torrey with Ann and would even ask now and then whether I thought he should get some cows for his ranch. I take credit for convincing him otherwise, having had some experience in my youth with the daily demands of cows.

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I always recall Lionel's sensitivity to others in the little things he thought of that never occurred to the rest of us. Leslie Harris, a former faculty member, often recalled the occasion when she and we first met at the annual faculty recruitment conference in Washington, D.C. We were all exhausted from a full day of interviews when Leslie showed up for her interview—the last of the day. Leslie was more exhausted than we after a day of grilling by law professors from more schools than she could remember. When she entered our interview room, Lionel took one look at her and instead of asking, “what are you interested in teaching,” “what articles have you published lately,” or “what do you think of so and so's approach to this or that problem,” he asked Leslie: “Would you like some cookies?” Leslie said right then and there she decided that this was the place she wanted to be and accepted a position with our faculty in short order because of that gentle man Lionel Frankel. Although Leslie later followed her husband Charlie's job to the University of Oregon, she always remembered Lionel's sensitivity to and concern for an exhausted candidate for a teaching position and his very first question of her: “Would you like some cookies?”

In those early years of Lionel's life in this community, our children played together and we often visited Lionel and Phyllis's home. Through the years it was obvious to us that Lionel passed his integrity, respect for all living things, and sensitivity on to his sons. While never boastful or one to talk of himself and his accomplishments—modesty and self-effacement were qualities he had to a fault—Lionel had a quiet pride in the achievement of Mark, Daniel, and Zack. Only when asked would he tell of their latest activities. It was obvious that he took a quiet and justifiable pride in their achievements. His eyes would light up and a smile would come to his face as he quietly talked about them and shared their successes without claiming any responsibility for those successes. But it was obvious to all of us that there was a good part of Lionel's character and integrity in each of his children, and he was proud that this was so although he would never say so or assume before others any responsibility for their success and their character.

Lionel's smile and willingness to laugh at himself hid deeper qualities which we all came to know and truly appreciate. Perhaps the most significant were Lionel's uncommon decency, humanity, sensitivity, compassion, and modesty about himself and his contributions. In over thirty-five years, one never heard Lionel disparage another person or boast of his own achievements. He always looked for the good in others and tried to understand what caused them to hold the views they held or undertake the actions they did. His was a voice of moderation and a concern for civility. Even on matters he believed in passionately, Lionel would always listen carefully to the views of others, look for points of agreement, and carefully reconsider his own views on the points of disagreement. He had a patient and subtle way of convincing one to his point of view and he always did so free of invective. Yet he stood fast on issues of

principle, and, as Dick Aaron reminded me, he resolutely and admirably marched to his own drum when his beliefs required him to do so. One of Dick's favorite memories of Lionel is a photograph from Li's Air Force career of his squadron passing in parade. Of the seventy-five plus men on parade, there were seventy-five plus out of step and one in step—Lionel. He did march to his own drum. As Dick said, he believed deeply in the protection of the innocent and due process, yet wrote a Yale Journal article urging consideration of preventive detention in some circumstances. He could and would defend all these positions both passionately and convincingly.

Lionel had a great compassion for those less fortunate than he and gave of himself to aid them wherever he could. I recall one case Lionel took involving two members of a minority race who had been convicted of rape in a small southern Utah town. The trial was quick and the punishment severe. There was a problem with the evidence, and Li was convinced the defendants had not received a fair trial. Even though most of us thought we knew a losing case when we saw it, Lionel would not be deterred by what we thought but was driven by what he believed to be right. He appealed the case and obtained a reversal and dismissal of the charges against the accused despite odds we all believed insurmountable. His lifelong passion for helping those in need and protecting the rights of those not otherwise adequately represented led him to serve on the Boards of Directors of the Legal Center for the Handicapped and the ACLU along with his service on the board of his synagogue. He did so because of his sense that a decent society should help the handicapped realize their full potential and his concern for preserving the civil liberties of us all. His interest in providing counsel for those imprisoned on death row caused him to devote the final years of his career to establishing the Rocky Mountain Innocence Project to provide legal assistance to those sentenced to death or imprisoned under questionable circumstances. He could just as easily have devoted those years to enjoying life with Ann in their beloved Torrey watching their alfalfa grow and the animals roam. Instead, he lent his considerable talent and spent much time in reviewing the petitions from prisoners who claimed they were unjustly imprisoned, sorting through the many without merit in search for those which were of merit. It was a cause that mattered deeply to Lionel as did any potential injustice that society visited upon its members.

One often saw students visiting Lionel in his office where he would spend many hours helping students to do the best that they could do. Students sensed that Lionel cared deeply about them as individuals and that he would go to great lengths to help them achieve. It is why so many of his students came to see Lionel as a warm and devoted friend—not just a teacher whose courses they had to complete successfully. While demanding, students knew him to be sensitive to the stress they were experiencing and compassionate and caring about their well-being. One of his former students recently told me that it was Lionel's gentle

manner in class and quiet encouragement that enabled her to stay in law school and succeed in becoming a lawyer. Typically, when she thanked him for doing so many years later, he blushed and quickly changed the subject from his success to her success.

Lionel was a teacher in the true sense of the word—he taught by virtue of his hard work, his sparkling intelligence, his example, and his determination to see that each student succeed. It was not surprising that when we held a retirement party for Lionel a few short years ago, the room was overflowing with former students and not a few tears from those who owed so much to Lionel as a teacher, as a friend, and as a role model for how one's life ought to be lived. After heartfelt speeches and words of praise, Lionel—embarrassed by all the praise—blushed and modestly said only two words: “Thank you.”

For his colleagues, Lionel was an example of what it means to be a true teacher and colleague. Lionel believed teaching was our first and most important calling. He taught an amazing array of subjects and always worked hard to be well-prepared for whatever he was assigned to teach and to help out by teaching new subjects in times of need. He was constantly experimenting with new ways to make his classes fun and exciting for his students. A colleague recalls that when Lionel was preparing his casebook on commercial law materials several years ago, he became intrigued with the commercial law problems of operating the then new Market Street Broiler, a fresh fish restaurant. He was fascinated with the practical and legal problems of coordinating the shipping and sale of fresh fish to a restaurant several hundred miles from its source of supply and decided to use this example to teach part of his course. When he taught the segment of the course using the restaurant as an example, he came to class dressed in the appropriate costume—waders, fishing vest and hat, and carrying poles and nets. His students years later said they remember that class well; although many could not recall the exact legal point being made, they do recall their delight with Professor Frankel wading into class dressed like a fisherman from the wilds of Alaska.

For his colleagues, Lionel was always available to those who might seek his wise counsel. He had no limitations upon giving of his time and experience to assist a fellow faculty member. He would often spend hours going over a class with his colleagues and take whatever time was necessary to help young faculty become successful in the classroom. When issues became contentious in faculty meetings, one could always count on Lionel for words of moderation and wisdom to still contentious debates and find a sensible solution. Even when the issue involved one Lionel believed in deeply and would not compromise, we always left the room the best of friends and with an understanding of and respect for the positions Lionel maintained. It was his obvious respect for others and their right to hold views different from his own that made him so effective a colleague to us all. And it was his manner of being a gentle and thoughtful man in the finest

sense of those words that endeared him to all of us. It is a model we can only aspire to emulate because Lionel lived an exemplary life of a gentle man in all that he did.

For the past ten years, Lionel has been waging a war with the illness that finally ended his life. It was a remarkable battle, one he fought with a quiet determination and a steely resolve. He seldom talked of his illness and never complained about the travails he had to endure despite the sometimes painful treatments he was subjected to and the difficult emotional struggle of good news and then bad inflicted upon him. We talked often about his illness and the latest treatment options available. It was obvious to me from the outset that he intended to fight the disease, whatever the pain and side effects of his treatments. It was a trying battle filled with emotional ups and downs that he bore without comment or complaint. His emotional battle with his disease often put me in mind of the opening lines of Francis Thompson's epic poem, *The Hound of Heaven*:

I fled Him, down the nights and down the days;
I fled Him, down the arches of the years;
I fled Him, down the labyrinthine ways
 Of my own mind; and in the midst of tears
I hid from Him, and under running laughter.
 Up vistaed hopes I sped;
 And shot, precipitated,
Adown Titanic glooms of chasmed fears.¹

While each success in treatment was followed by a relapse some time later and Lionel was faced with seeking out some alternative treatment, few knew of the successes or failures. He never complained or allowed others to know of the successes or relapses despite his "vistaed hopes" and "chasmed fears." Quite simply, he would never permit himself to inflict his burdens on others. Quietly, he just soldiered on, determined to beat this illness that was depriving him of his health and the peace of mind he and his family so richly deserved in his retirement years for all that he had done for so many during his career.

When I last visited Lionel a few days before Lionel's passing, it was apparent that he had not given up the fight but had accepted the reality that the end was near. He apologized for my having to drive out to his home to visit and asked how everyone was doing—still concerned for others and not himself. When I told him that I had written our former colleague, Ileana Porras, who had left the faculty to become a cloistered nun, about his condition because I knew she would want to know about him, he said he hoped she would pray for him. I told him

¹Francis Thompson, *The Hound of Heaven*, in FRANCIS THOMPSON: POEMS AND ESSAYS 107 (Wilfred Meynell ed., Newman Bookshop 1947) (1913).

that's why I wrote her, to make sure "all the bases were covered." He chuckled and thanked me for taking the trouble to make sure Ileana knew so "that all the bases were indeed covered." When I called Ileana to tell her the news of Lionel's passing and told her about my conversation with Lionel, she said she had been praying for him but Lionel was the one person she knew "who had all the bases covered." "He is safe," she said.

Lionel and I also talked about friends on the faculty and the pending arrival of his family from other places and how much he was looking forward to visiting with them. It became apparent to me that he was holding on to life to say goodbye to those he loved so much because he knew what that would mean to them. Appropriately, that gift was given to this most decent and gentle man.

When I heard of Lionel's death shortly after his family had gathered by him and he had time to visit with them, I hoped that he heard and welcomed that voice Francis Thompson concluded his poem with:

"Rise, clasp My hand, and come!"
Halts by me that footfall:
Is my gloom, after all,
Shade of His hand, outstretched caressingly?²

He left us with the comfort of having spent his final hour with his family and without pain and the fear of a lengthy passage of time before he rose, clasped the hand, and left.

Lionel blessed this place with his uncommon grace, humility, gentleness, and modesty. He touched us all with his decency, humanity, compassion, and respect for all living things. That legacy will live on in this place, in his family, and in all who knew him.

Rest in peace old friend, your journey in this life may be done but your legacy lives on.

²*Id.* at 112-13.